IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1442 OF 1987

Eknath Bhiku Yadav & Anr. .. Petitioners

versus

Shri Ganpatrao Shankarrao Dhawan & ors.. Respondents

...

Mr.A.A.Kumbhakoni with Mr.Abhijit Kulkarni for the petitioner

Mr P.K.Hushing for Respondent nos. 1 to 4.

Ms S.S.Bhende, Assistant Government Pleader for for respondent no. 10

Respondent nos. 9 and 11 served.

CORAM : S.B. MHASE AND

D.G. KARNIK, JJ

DATED : 6th February 2006.

ORAL ORDER (Per D.G.Karnik, J)

1. By this petition, the petitioners challenge the certificate of exemption granted under section 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948

(for short "the B.T. & A.L. Act")

2. Respondent nos.1 to 7 are the trustees of Shri Maruti Deo Trust Pimpli Limtek (for short "the trust") which is registered as a public trust under the Bombay Public Trusts Act, 1950 (for short "the BPT Act"). The trust is the owner of the lands bearing Gat No.264 and 265 of Village Pimpli, Taluka Baramati, District Pune (for short "the said lands"). The petitioners are the tenants of the trust since long and it is not disputed that they were in possession of the said lands on 1st April 1957 i.e. the "tillers day" prescribed under BT & AL Act. The respondent nos.4 to 7 made an application to the Collector, the respondent no.10 herein for issuance of a certificate of eligibility for exemption under section 88-B of the BT & AL Act on 9th July 1986. A notice of enquiry was issued to the petitioners and they were given even an opportunity of cross-examining the applicant trustees. In the cross-examination, the trustees of the trust admitted that the petitioners were the tenants in occupation of the said lands on 1st April 1957. They further admitted that the trust was not registered on 1st April 1957 i.e. on the "tillers day" but was registered as a public trust under the BPT Act for the first time in

the year 1984. Despite this admission, the respondent no.10 issued a certificate of exemption under section 88-B of the BT & AL Act. That certificate is impugned in this petition.

3. Learned counsel for the petitioners submits that the petitioners were tenants in occupation of the said lands on 1st April 1957. The petitioner being in possession as tenants on the tillers day, the became owners of the said lands under the provisions of section 32 to 32R of the BT & AL Act. An application for exemption and issuance of a certificate under section 88-B of the BPT Act was made by the trustees on 9th July 1986 when they were not the owners of the land as the land was deemed to have been purchased by the petitioners on 1st April 1957 under the provisions of the BT & AL Act. Therefore, there was no question of grant of a certificate of exemption under section 88-B of the BT & AL Act. Learned counsel for the petitioners referred to and relied upon two decisions of this Court in Laxminarayan Temple Vs. Laxman M. Chandore reported in AIR 1970 Bom.23 and Chhatrapati Charitable Devasthan Trust Vs. Parisa Appa Bhoske & ors. reported in 1979 Mh.L.J. 163 in support of his submissions.

4. The BT & AL Act when enacted in 1948 granted protection against eviction to the tenants of agricultural lands. It did not provide for any automatic purchase of the lands in occupation by the tenants. Provisions of section 32 to 32R along with few other sections were inserted into the BT & AL Act by means of an amendment effect by Bombay Act No.XIII of 1956. Under the amended BT & AL Act, subject to certain exceptions with which we are not concerned, the tenants became owners of the lands in their possession from the tillers day i.e. from 1st April 1957. By the same amending Act, section 88-B was also added to the parent Act. Section 88-B provides for exemption from provisions of the BT & AL Act save certain sections thereof. It interalia grants exemption from the provisions of the Act to the lands which are the property of a trust for an educational purpose, hospital, panjarapole, a gaushala or an institution for public religious worship. The exemption granted to the public trust is subject to two conditions viz. (i) the trust should be registered or deemed to be registered under the BPT Act 1950 and (ii) the entire income of such lands should be apportioned for the purpose of the trust. Therefore, in order to get an exemption under

section 88-B, a trust must be registered or deemed to be registered under the provisions of the BPT Act.

5. It is not the case of the respondent trustees that the trust was registered under any of the old Acts relating to the public trusts and therefore deemed to be registered under the BPT Act. It was their case as set out in the application for exemption as also as stated in the cross-examination of the trustees that the trust was registered for the first time on 8th August 1984. It is also an admitted position that the petitioners were the tenants in possession of the said lands on the tillers day i.e. 1st April 1987. In Laxminarayan Temple Vs. L.M. Chandore (Supra), a Division Bench of this Court has specifically held that in order for the trust to claim an exemption under section 88-B of the BPT Act, the trust must be registered before 1st April 1957. This is so because if the trust was not registered on 1st April 1957, a tenant would become a deemed purchaser of that date and once the tenant became a deemed purchaser and the ownership of the land which vested in him on 1st April 1957 could not be divested by subsequent registration of the trust. The said decision has been followed and

applied by another Division Bench in Chhatrapati Charitable Devasthan Trust Vs. Parisa Appa Bhoske & Ors. (Supra). In that case, the Division Bench went further and said that even where an application for registration of a trust was made before 1st April 1957 but the registration was not actually effected before 1st April 1957, the tenant would become the deemed owner of the land and thereafter, a certificate u/s.88-B of the B.T. & A.L. Act could not be granted. The Division Bench rejected the argument advanced that the registration would relate back to the date of the application.

6. Learned counsel for the respondent nos.1 to 7 submitted that the aforementioned decisions require reconsideration as the provisions of the Bombay Rent-Free Estates Act, 1852 and the exemption from Land Revenue (No.1) Act 1863. Learned counsel submitted that these Acts impose restrictions on the lands held by a Devasthan and therefore, the lands held by a Devasthan should be treated as absolutely exempt u/s.88-B of the B.T & A.L. Act. The two decisions of the Division Bench of this Court referred to above are of long standing. The first decision was referred more than 35 years ago and has stood the test of time. We

are not satisfied that they require reconsideration as in one opinion nothing contained in the two Acts cited above would make any difference to the ultimate decision and ratio of the two cases. We therefore reject the request of the learned counsel of the petitioner for referring the matter to a larger Bench.

7. For these reasons, we are of the view that it was not open to the respondent no.10 to grant a certificate of exemption to the trust after the said lands vested in the petitioner on 1st April 1957.

8. Accordingly, the petition is allowed. The impugned certificate of exemption u/s.88B of the B.T. & A.L. Act issued by the respondent no.10 on 13th January 1987 is hereby quashed. The concerned authorities are directed to hold proceedings u/s.32G of the BT & AL Act to fix the purchase price at an early date.

(D.G.KARNIK, J) **(S.B. MHASE, J)**